

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 22, 2009 Session

GREGORY B. WOOTEN v. KENNETH BLACK

Appeal from the Circuit Court for Bedford County
No. 9847 F. Lee Russell, Judge

No. M2009-00963-COA-R3-CV - Filed December 15, 2009

Plaintiff filed this action against his former partner alleging breach of their partnership agreement. The Special Master found that the defendant misappropriated profits of the partnership. Thereafter, the parties entered into an Agreed Order wherein the plaintiff was awarded a judgment of \$38,750.00 against the defendant. The Agreed Order expressly reserved the issue of prejudgment interest for the trial court's determination. The trial court awarded prejudgment interest. Defendant appealed the award of prejudgment interest. Finding no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

T. Holland McKinnie, Franklin, Tennessee, for the appellant, Kenneth Black.

C. Kelly Wilson, Shelbyville, Tennessee, for the appellee, Gregory B. Wooten.

OPINION

Gregory Wooten and Kenneth Black entered into a partnership agreement in July 2000 to form Lean Manufacturing Group, LLC, which provided that Wooten owned a 49 percent interest and Black owned 51 percent interest in the partnership and that the parties would share evenly in the profits.

On February 27, 2004, Wooten filed this action alleging that Black had breached the partnership agreement by misappropriating profits. A Special Master was appointed to evaluate the claim. In his report, the Special Master concluded that Black was indebted to Wooten in the amount \$12,012.45, excluding miscellaneous disputed claims that needed to be resolved.¹

¹The Special Master found that Black had misappropriated \$60,024.89 of company funds for his personal use. After crediting Black \$36,000 for capital contributions Black had made to the company, the Special Master determined
(continued...)

Thereafter, the parties entered into an Agreed Order, which provided that Black would pay Wooten \$38,750 (being the sum of one-half of \$19,000 in wages, \$13,500 in relocation expenses, routine vehicle maintenance, cell phone bills, and temporary housing, and \$45,000 in other cash withdrawals). However, Black was not ordered to pay the \$12,012.45 recommended in the Special Master's report. The Agreed Order also expressly reserved the issue of prejudgment interest for the trial court's determination. Following submission of briefs on this issue, the trial court awarded Wooten prejudgment interest. Black appeals the award, but not the amount, of prejudgment interest.

ANALYSIS

The only issue on appeal is whether the trial court abused its discretion by awarding prejudgment interest.²

An award of prejudgment interest is within the sound discretion of the trial court. *Spencer v. A-1 Crane Service, Inc.*, 880 S.W.2d 938, 944 (Tenn. 1994); *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 446 (Tenn. 1992). The trial court's decision to award prejudgment interest will not be disturbed on appeal unless the record reveals a manifest and palpable abuse of discretion. *Id.* Generally stated, the abuse of discretion standard does not authorize an appellate court to merely substitute its judgment for that of the trial court. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998). Thus, in cases where the evidence supports the trial court's decision, no abuse of discretion is found. *Id.* (citing *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978) (applying abuse of discretion standard to trial court's decision to deny request for suspended sentence), cert. denied, 439 U.S. 1077, 99 S.Ct. 854, 59 L.Ed.2d 45 (1979)).

Although we give great deference to the trial court's decision to award prejudgment interest, *Scholz v. S.B. Intern., Inc.*, 40 S.W.3d 78, 82 (Tenn. Ct. App. 2000) (citing *Myint*, 970 S.W.2d at 927), our deference is not synonymous with rubber stamping a trial court's decision. Discretionary decisions remain subject to appellate scrutiny, albeit less strict. Our review is confined to determining whether the trial court has based its decision on applicable legal principles and whether the decision is consistent with the evidence. *Scholz*, 40 S.W.3d at 82-83 (citing *Myint*, 970 S.W.2d at 927; *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694, 709 (Tenn. Ct. App. 1999)).

Tennessee Code Annotated § 47-14-123 provides that prejudgment interest, interest as an element of damages, may be awarded in accordance with the principles of equity at a rate not in excess of a maximum effective rate of ten percent per annum. The principle of equity is the foremost guiding consideration for a trial court when exercising its discretion to award or deny prejudgment interest. *Myint*, 970 S.W.2d at 927; Tenn. Code Ann. § 47-14-123. Basically, "the court must decide whether the award of prejudgment interest is fair, given the particular circumstances of the case."

¹(...continued)

that the net amount Black owed Wooten was \$12,012.45. There remained a dispute regarding wages, relocation expenses, routine vehicle maintenance, cell phone bills, temporary housing, and other cash withdrawals made by Black.

²Black does not dispute the amount of prejudgment interest, only the award of prejudgment interest.

Myint, 970 S.W.2d at 927. “In reaching an equitable decision, a court must keep in mind that the purpose of awarding the interest is to fully compensate a plaintiff for the loss of the use of funds to which he or she was legally entitled, not to penalize a defendant for wrongdoing.” *Id.* (citations omitted).

In the not-so-distant past, opinions dealing with prejudgment interest left a distinct impression of subtle judicial antipathy toward awarding prejudgment interest unless it was statutorily mandated. *Scholz*, 40 S.W.3d at 81. The decision in *Myint*, however, heralded a departure from the former approach and “requires a re-examination of the factual and legal bases used by the courts to determine whether prejudgment interest should be awarded.” *Scholz*, 40 S.W.3d at 81.

Parties who have been wrongfully deprived of money have been damaged in two ways. First, they have been damaged because they have not received the money to which they are entitled. Second, they have been damaged because they have been deprived of the use of that money from the time they should have received it until the date of judgment. Awards of pre-judgment interest are intended to address the second type of damage. They are based on the recognition that a party is damaged by being forced to forego the use of its money over time. Thus, our courts have repeatedly recognized that prejudgment interest is awarded, not to punish the wrong-doer, but to compensate the wronged party for the loss of the use of the money it should have received earlier.

Scholz, 40 S.W.3d at 82 (internal citations omitted).

Historically, the two most common reasons for denying prejudgment interest were: one, the “uncertainty of either the existence or amount of an obligation;” and, two, cases wherein the claim is reasonably disputed. *Myint*, 970 S.W.2d at 927-28, n. 7. The decision in *Myint* has supplanted the formerly rigid rules with more flexible guidelines. *Scholz*, 40 S.W.3d at 83. In place of the rigid criteria, the *Myint* Court articulated the following standard:

Simply stated, the court must decide whether the award of pre-judgment interest is fair, given the particular circumstances of the case. In reaching an equitable decision, a court must keep in mind that the purpose of awarding the interest is to fully compensate a plaintiff for the loss of the use of funds to which he or she was legally entitled, not to penalize the defendant for wrongdoing.

Myint, 970 S.W.2d at 927. As a consequence of the *Myint* decision, the Court shifted the balance to favoring prejudgment interest “whenever doing so will more fully compensate plaintiffs for the loss of use of their funds.” *Scholz*, 40 S.W.3d at 83.

Fairness will, in almost all cases, require that a successful plaintiff be fully compensated by the defendant for all losses caused by the defendant, including the loss of use of money the plaintiff should have received. That is not to say that trial

courts must grant prejudgment interest in absolutely every case. Prejudgment interest may at times be inappropriate such as (1) when the party seeking prejudgment interest has been so inexcusably dilatory in pursuing a claim that consideration of a claim based on loss of use of the money would have little weight; (2) when the party seeking prejudgment interest has unreasonably delayed the proceedings after suit was filed; or (3) when the party seeking prejudgment interest has already been otherwise compensated for the lost time value of its money.

Scholz, 40 S.W.3d at 83 (internal citations omitted).

Here, we can identify several considerations that are consistent with the equitable principles used to justify an award of prejudgment interest in *Scholz*. *Id.* at 84. First, Wooten did not have the use of the money to which he was entitled during the time that Black was using that money for his personal use. Moreover, Wooten has not otherwise been compensated for the lost time value of this money. Black argues that the capital contributions he made to the company should be considered in offsetting the amount of prejudgment interest he owes. However, neither Black's capital contributions of \$36,000 nor the \$60,024.89 of company funds that Black used for personal use were considered in the Agreed Order that both parties signed. If those amounts had been considered, it stands to reason that Black would owe Wooten an additional \$12,012.45, plus the interest on that amount. Instead, the Agreed Order stated that the amount owed by Black of \$38,750, which is undisputed on appeal, was "rendered through compromise" and the only issue left for the trial court was the matter of pre-judgment interest. As such, the amount in controversy was reasonably ascertainable. The fact that Black disputed the amount that he owed Wooten does not stand for the principle that the amount was unreasonable to ascertain. Finally, Wooten did not delay unreasonably seeking an accounting nor did he delay the proceedings. Accordingly, we find no abuse of discretion in the decision to award prejudgment interest.

IN CONCLUSION

We affirm the judgment of the trial court, and this matter is remanded with costs of appeal assessed against the appellant, Kenneth Black.

FRANK G. CLEMENT, JR., JUDGE